

engaged in the preliminary stages of Fund's existence, when the disproportion between the insurance business of Insurance Company and the sale of Fund shares would be very great. However, it was also clear that if Fund was successfully launched, its activities would rather quickly reach a stage where a serious question would arise as to the applicability of the section 32 prohibition.

(k) An estimate supplied to the Board indicated that 100,000 shares of Fund might be sold annually to produce, based on then current values, annual gross sales receipts of over \$1 million. Insurance Company's total gross income for its last fiscal year was almost \$10 million. On this basis, about one-tenth of the annual gross income of the Insurance Company-Fund complex (more than one-tenth, if income from investments of Insurance Company was eliminated) would be derived from sales of Fund shares. Although total sales of shares of Fund during the first year might not approximate expectations, it was assumed that if the estimate or projection was correct, the annual rate of sale might well rise to that level before the end of the first year of operation.

(l) It appeared that net income of Insurance Company from Fund's operations would be minimal for the foreseeable future. However, it was understood that Insurance Company's chief reason for launching Fund was to provide salesmen for Insurance Company (who were to be the only sellers of shares of Fund, and most of whom, Insurance Company hoped, would qualify to sell those shares), with a "package" of mutual fund shares and life insurance policies that would provide increased competitive strength in a highly competitive field.

(m) The Board concluded that Insurance Company would be "primarily engaged" in issuing or distributing shares of Fund within the meaning of section 32 by not later than the time of realization of the aforementioned estimated annual rate of sale, and possibly before. As indicated in *Board of Governors v. Agnew*, 329 U.S. 441 at 446, the prohibition of the statute applies if the section 32 business involved is a "substantial" activity of the company.

(n) This, the Board observed, was not to suggest that officers, directors, or employees of Insurance Company who are also directors of member banks would be likely, as individuals, to use their positions with the banks to further sales of Fund's shares. However, as the Supreme Court pointed out in the *Agnew* case, section 32 is a "preventive or prophylactic measure." The fact that the individuals involved "have been scrupulous in their relationships" to the banks in question "is immaterial."

(12 U.S.C. 248(i))

[33 FR 13001, Sept. 14, 1968. Redesignated at 61 FR 57289, Nov. 6, 1996]

§ 250.413 "Bank-eligible" securities activities.

Section 32 of the Glass-Steagall Act (12 U.S.C. 78) prohibits any officer, director, or employee of any corporation or unincorporated association, any partner or employee of any partnership, and any individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, from serving at the same time as an officer, director, or employee of any member bank of the Federal Reserve System. The Board is of the opinion that to the extent that a company, other entity or person is engaged in securities activities that are expressly authorized for a state member bank under section 16 of the Glass-Steagall Act (12 U.S.C. 24(7), 335), the company, other entity or individual is not engaged in the types of activities described in section 32. In addition, a securities broker who is engaged solely in executing orders for the purchase and sale of securities on behalf of others in the open market is not engaged in the business referred to in section 32.

[Reg. R, 61 FR 57289, Nov. 6, 1996]

PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

Subpart A—General Provisions

Sec.

261.1 Authority, purpose, and scope.